NO. 82-1836

IN THE SUPREME COURT
OF THE UNITED STATES

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SUPREME COURT, U.S.

OCTOBER TERM, 1982

KEENE CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION OF PETITIONER KEENE CORPORATION TO DEFER CONSIDERATION OF PETITION FOR CERTIORARI

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Counsel for Petitioner

*Counsel of Record

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Petitioner Keene Corporation ("Keene") respectfully requests that the Court defer consideration for the time being of its Petition for Writ of Certiorari ("Keene's Petition"), which is being filed simultaneously with this Motion. The reasons for this request are as follows:

1. As is set forth more fully in Keene's Petition, one of the bases for Keene's Petition to this Court is that there is an irreconcilable conflict among the First, Second, Fourth and Ninth Circuits as to whether admiralty jurisdiction applies to claims of injury caused by exposure to asbestos-containing products in shipyards and on vessels in navigable waters, and third-party actions arising out of those claims. One of those cases, Austin v. Unarco Industries, Inc., No. 82-1168 (1st Cir. Mar. 30, 1983), was decided by the First Circuit on March 30, 1983, approximately seven weeks after the Second Circuit's decision in the present action.

2. Keene believes that the plaintiffs in the Austin case may petition this Court for a writ of certiorari on the issue of, inter alia, the applicability of admiralty jurisdiction to claims of injury due to alleged exposure to asbestos while working in shipyards and on vessels in navigable waters. If such a petition is filed, it will present to this Court issues identical to those presented in Keene's Petition.

3. In these circumstances, it would appear that both petitions should be considered by the Court at the same time. Such consideration will not only conserve the time of the court, but will assure that the Court has the benefit of the views of several affected parties in determining whether to grant certiorari in this matter.

4. Pursuant to 28 U.S.C. §2101(c) and Supreme Court Rule 20, the time for plaintiffs in the Austin case to file their certiorari petition will expire on or about June 28, 1983. Keene therefore requests that the Court

defer consideration of Keene's Petition until that time, and in the event that plaintiffs in Austin file a petition, that both petitions be considered together and at the same time.

5. Keene believes that neither the respondent United States of America nor any other party will be prejudiced by the short delay that is being requested.

CONCLUSION

For the foregoing reasons, the Court should defer consideration of Keene's petition until June 28, 1983, or until such time as plaintiffs' petition in Austin has actually been filed, and should consider both petitions at the same time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Eugene R. Anderson, counsel for petitioner Keene Corporation, am a member of the Bar of the Supreme Court of the United States. Pursuant to Rule 28.5(b) of this Court, I hereby certify that on this 11th day of May, 1983, service of the foregoing Motion to Defer Consideration of Petition for Certiorari upon respondent United States of America was made by mailing one copy, with first class postage prepaid, to each of the following:

Solicitor General
Department of Justice
Washington, D.C. 20530

Jane Booth, Esq.
United States Attorney's Office
1 St. Andrews Plaza
New York, New York 10007.

I further certify that all parties required to be served have been served.

Dated: May 11, 1983

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